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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,370	02/19/2004	Joanne Kaye	486.0046USU	3571

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EXAMINER

HALE, GLORIA M

ART UNIT PAPER NUMBER

3765

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/782,370

Applicant(s)

KAYE ET AL.

Examiner

Gloria Hale

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-14 and 16-20 is/are allowed.
- 6) ☒ Claim(s) 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-20 are present in the application.

Claims 1-14 and 16-20 are allowed. None of the cited references, alone or in combination, disclose the melted cut perforation as in claim 1 and the first and second elements of perforations and dimples as in claim 9 and the method of claims 16-20 as indicated in the last office action. However, claim 15 is still broad and reads on the Judson reference.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Judson (US 6,174,217).

Judson discloses a brassiere 14 with cups 18, a central gore panel 24 and side panels 22 with each cup having an inner layer 32 and an outer layer 30 with the inner layer 32 being of a sheer/transparent material or with cut outs such as netting or lace. The third layer or spacer layer is 36 and can be of lace or sheer transparent material, which has holes or perforations in a free form design and is breathable as broadly

claimed. The brassiere and the third layer insert is made of the claimed materials and are sewn or have a mechanical connection of a pocket as broadly claimed. (See Judson, col. 2, line 60- col. 4, line 29 and figures 1-3).

Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Cheng(US 6,306,006).

In regard to claim 15, Cheng discloses a brassiere comprising a pair of breast cups (2) with a central panel (not numbered) between the cups as seen in figure 1; a pair of side panels (as seen in figure 1- not numbered) each connected to a separate one of said pair of breast cups. Each breast cup has a first fabric layer 12, a second fabric layer 12, and a third fabric layer 11 therebetween the first and second fabric layers. The third fabric layer as a first and second surface with a plurality of perforations, valleys or dimples (13) as broadly claimed wherein the third fabric layer is a spacer fabric between the cup layers. (See Cheng figures 1 and 2 and col. 1, lines 1-20).

Response to Arguments

Applicant's arguments filed 6-26-06 in regard to Judson have been fully considered but they are not persuasive. In response to applicant's arguments of the response applicant is ignoring an inherent function of the Judson insert. Judson's insert layer adds an additional layer, which would stiffen the cup and thereby provide support to the cup. The third layer of Judson is also a sheer woven fabric wherein the interstices within the weave itself provide a pattern as broadly claimed. The insert inherently acts as a spacer fabric between the two cup layers. The interstices between the fabric

threads provide the breath ability as broadly claimed. It is suggested that applicant more specifically describe the limitation in regard to the pattern.

Conclusion


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gloria Hale
Primary Examiner
Art Unit 3765
